

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96677; File No. SR-CboeEDGX-2023-001]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 17, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 3, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, effective January 3, 2023. The Exchange proposes to modify its market data fees for EDGX Options Top.³ Particularly, the Exchange proposes to modify the Professional and Non-Professional User Fees and adopt a new Enterprise Fee for EDGX Options Top.

The Exchange first proposes to reduce the Professional and Non-Professional User fees for EDGX Options Top. The Exchange currently charges Internal Distributors and External Distributors that redistribute any of the EDGX Options Data Feeds different fees for their Professional Users⁴ and Non-Professional Users.⁵ The Exchange currently assesses a monthly fee for Professional Users of \$10.00 per User and a monthly fee of \$1.00 per Non-Professional User.⁶ Further, the Fee Schedule provides that Users of any one of EDGX Options market data products (*i.e.*, EDGX Options Top, EDGX Options Depth, EDGX Options Auction Feed, EDGX Options Complex Depth, EDGX Options Complex Top, and EDGX Options Complex Auction Fees) may receive, at no additional charge, access to any or all of the other market data products listed. The Exchange proposes to reduce the User fees for EDGX

Options Top. Particularly, the Exchange proposes to reduce the monthly (i) Professional User fee from \$10 per user to \$5 per user and (ii) Non-Professional User fee from \$1.00 per user to \$0.10 per user. The Exchange also proposes to start charging separate User fees for EDGX Options Top. User Fees for the Exchange’s remaining market data products will continue to receive, at no additional charge, access to any or all of the other market data products lists (with the exception of EDGX Options Top. The Exchange has reformatted the Market Data Fees table to make this clear.⁷

The Exchange lastly proposes to establish a \$20,000 per month Enterprise Fee that will permit a recipient firm who receives EDGX Options Top Data from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to User fees and will permit a recipient firm who receives EDGX Options Top Data from a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. The Enterprise Fee may provide a recipient an opportunity to reduce its fees. For example, if a recipient firm has 15,000 Professional Users who each receive EDGX Options Top at \$5.00 per month (as proposed), then that recipient firm will pay \$75,000 per month in Professional Users fees. If the recipient firm instead were to purchase the proposed Enterprise license, the recipient firm would alternatively pay a flat fee of \$20,000 for an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls the display of EDGX Options Top if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, the recipient firm must provide the Exchange with a count of the total number of authorized person users of each product, including both Professional and Non-Professional Users. The Exchange notes that the purchase of an Enterprise license is

³ EDGX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the System.

⁴ A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

⁵ A “Non-Professional User” of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

⁶ Distributors that receive EDGX Options Data Feeds are required to count every Professional User and Non-Professional User to which they provide the market data product(s).

⁷ The Exchange is not proposing any changes to the current User Fee rates for its other market data products at this time and Users of any one of the remaining market data products may continue to receive, at no additional charge, access to any or all of the other market data products listed (*i.e.*, except for EDGX Options Top).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,¹⁰ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.¹¹ The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange’s affiliates, and each of the Exchange’s affiliated U.S. options exchanges also offers similar top-of-

book data.¹² Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGX Options Top Feed. Further, the quote and last sale data contained in the EDGX Options Top Feed is identical to the data sent to OPRA for redistribution to the public.¹³ Accordingly, market participants can substitute EDGX Options Top with feeds from other exchanges and/or through OPRA. Exchange top-of-book data is therefore widely available today from a number of different sources.

Moreover, the EDGX Options Top is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to

investors and listed companies.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of EDGX Options Top Data.

The Exchange believes the proposed changes to reduce the current Professional and Non-Professional User fees are reasonable as recipient firms will be subject to lower User fees. Additionally, the User fees continue to be lower than User fees assessed by other exchanges for similar data.¹⁵ The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The Exchange also believes continuing to offer EDGX Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

The Exchange believes the proposed change to start charging separate User fees for EDGX Options Top is equitable and reasonable because the Exchange has not charged for separate User Fees for both feeds since EDGX Options Top was adopted in January 2018 and the Exchange now wishes to have separate User fees for EDGX Options Top.¹⁶ Moreover, the remaining EDGX Options data products are purely optional. Only those Customers that deem the products

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See e.g., Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of \$40 per month to professional users and \$1.00 per month to non-professional users of Top of PHLX Options (TOPO) Data. See also NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of \$50 per month to professional users and \$1.00 per month to non-professional users of American Options Top Data.

¹⁶ See Securities Exchange Act Release No. 82462 (January 12, 2018), 83 FR 1647 (January 8, 2018) (SR-CboeEDGX-2017-010).

¹² See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

¹³ The Exchange notes that it makes available to “Customers” the BBO data and last sale data that is included in the EDGX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (December 27, 2022), available at https://markets.cboe.com/us/options/market_statistics/.

to be of sufficient overall value and usefulness would purchase them. Additionally, the Exchange is not required to provide any User fee waiver to any Distributors of EDGX Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to recipient firms.

The proposed Enterprise Fee for EDGX Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of EDGX Options Top Data, then it may continue using the per User structure and benefit from the proposed per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute EDGX Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count authorized users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges. In this competitive environment potential subscribers are

free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all similarly situated recipient firms of EDGX Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of EDGX Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to EDGX Options Top, or any of the Exchange's data feeds, as described above. Also as described above, there are numerous substitute products offered by other national securities exchanges, as well as OPRA. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CboeEDGX-2023-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2023-001 and should be submitted on or before February 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-01117 Filed 1-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96672; File No. SR-CBOE-2023-001]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Cboe Data Services, LLC Fee Schedule

January 17, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 3, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to update the Cboe Data Services, LLC Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Cboe Data Services, LLC ("CDS") Fee Schedule, effective January 3, 2023. The Exchange proposes to modify its fees relating to the distribution of the BBO data feed.³ Particularly, the Exchange proposes to modify the BBO Data Fee and Display Only User Fee, eliminate a fee waiver for takers of BBO Data, and adopt a BBO Enterprise Fee. The Exchange also proposes to rename the "BBO data feed" to "Cboe Options Top Data Feed" (or "Cboe Options Top Data"), and use the proposed name herein, in order to align with the naming convention used by the Exchange's affiliated options exchanges for similar data products.⁴

The Exchange first proposes to modify the current monthly Data Fee for Cboe

Options Top Data. Currently, the Exchange assesses a "Data Fee", payable by a Customer, of \$9,000 per month for internal use and external redistribution of the Cboe Options Top Data Feed.⁵ The Data Fee entitles a Customer to provide the Cboe Options Top Data to an unlimited number of internal users and Devices⁶ within the Customer. A Customer receiving the Cboe Options Top Data Feed from another Customer or directly from the Exchange is assessed the Data Fee by the Exchange pursuant to its own market data agreement with CDS and is entitled to use the Data internally and/or distribute it externally. All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with CDS for the data and pays the Data Fee. The Exchange now proposes to adopt separate fees for internal and external distribution (and codify the definitions of Internal and External Distributors in the CDS Fee Schedule).⁷ Specifically, the Exchange proposes to maintain the current monthly fee of \$9,000 for internal distribution but adopt a reduced fee of \$5,000 per month for external distribution.

The Exchange next proposes to modify its current User Fees. The Exchange currently charges a "User Fee", payable by a Customer, of \$50 per month per Device or user ID for use of the data in the Cboe Options Top Data Feed by "Display Only Service"⁸ users. The current User fee is payable only for "external" Display Only Service users

⁵ A "Customer" is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.*, a Customer or an extranet service provider), whether that data is distributed externally or used internally. A third-party vendor of an Approved Third-Party Device, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS. A Floor Broker User, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS.

⁶ A "Device" means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

⁷ An Internal Distributor of an Exchange market data product is a Distributor that receives the Exchange market data product and then distributes that data to one or more Users within the Distributor's own entity. An External Distributor of an Exchange market data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

⁸ Display Only Service allows a natural person end-user to view and manipulate data using the Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The BBO Data Feed is a real-time data feed that includes the following information: (i) outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer versus non-customer contracts at the best bid and offer ("BBO"); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vii) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (viii) COB information; and (ix) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority ("OPRA") for redistribution to the public. This data feed is made available by the Exchange's affiliate CDS.

⁴ See Cboe BZX Options Fee Schedule and Cboe EDGX Options Fee Schedule.